

In the Matter of the Arbitration Between:

Transit Management of Denton County)	
)	
Employer)	
)	
and)	FMCS Case No.: 100927-60220-3
)	Issue - Contract Bids of Runs
Amalgamated Transit Union Local 1338)	
)	
Union)	

ARBITRATOR'S OPINION AND AWARD

Arbitrator: Ruben R. Armendariz, selected by the parties through the procedures of the Federal Mediation and Conciliation Service

Place and dates of hearing: Law Offices of Gillespie, Rozen & Watsky
Dallas, Texas
April 20, 2011

Appearances:

For the Employer: William Hicks, Labor Counsel
FirstTransit, Inc.
600 Vine Street, Suite 1400
Cincinnati, Ohio 45202

For the Union: Yona Rozen, Esquire
Gillespie, Rozen & Watsky, P.C.
3402 Oak Grove Ave., Suite 200
Dallas, Texas 75204

INTRODUCTION

This matter was heard on April 20, 2011, in Dallas, Texas. The parties to this proceeding agreed the grievance was procedurally and substantively arbitrable and properly before the arbitrator. They were afforded full opportunity to be heard, examine and cross-examine witnesses and to introduce evidence on the issues. Based on the entire record, my observation of the witnesses, examination of the evidence, exhibits presented, post-hearing briefs¹ submitted, and arguments presented, this arbitrator makes the following findings and renders the following Discussion, Opinion and Award.

Transit Management of Denton County, hereafter referred to as TMDC or the Employer/Company operates the Denton County Transit Authority, hereafter referred to as (DCTA). DCTA is funded through public funds.

The Amalgamated Transit Union, Local 1338 is the exclusive representative for all full-time and part-time bus Operators employed by the Company and excluding all office clerical Operators, Maintenance Operators, dispatchers, managers, guards and supervisors as defined by the National Labor Relations Act (NLRA), as certified by the National Labor Relations Board (NLRB) in Case No.16-RC-10846.

Company and Union negotiated its' first collective bargaining agreement (CBA) in 2008 and 2009 and the CBA became effective on March 23, 2009 until midnight March 23, 2012.

Company provides various transportation services to the general public in Denton County, Texas. Company has fixed route services, campus shuttles and

¹ The parties agreed to submit post-hearing briefs postmarked May 27, 2011, with the last brief received to close the record. The post-hearings briefs were timely postmarked and the last brief was received on May 31, 2011. Thus, the record closed on May 31, 2011.

Access. Access provides door-to-door paratransit services for the elderly and disabled customers. Buses are driven by full-time and part-time bus operators who are employed by the County. Bus Operators are divided into three groups:

- (1) Fixed Route Operators²,
- (2) Access Operators³, and
- (3) Extra-Board Route Operators⁴.

Issue

The parties agreed to frame the issue as follows:

Whether the Company violated the CBA in the way in which they created, formulated and administered a general bid in the Summer of 2010 and how they effectuated it in operating said bid? If so, what is the appropriate remedy?

Statement of the Case

This is a contractual dispute over contract bids and runs. In dispute is the Company's alleged unilateral move to a more general assignment of times and total hours for the Access bid run. Parties agreed that the CBA would be JX-1 and that they would present two grievances. The first grievance was marked as JX-2 (Grievance 2010 No. 0543) and the second was marked as JX-3 (Grievance 2009 No. 1688). The bid in dispute is marked as JX-4. Issues raised by both grievances are whether the August 2010 TMDC/Denton County mark-up for bids for the

² Fixed Route Operators have a regular schedule and route each day they are operating and can be easily predicted in advance as to the number of buses and drivers needed.

³ Access Route Operators have a variable and fluctuating on-demand service that is based on public request for rides; to a doctor, to the grocery store, or for group events. Some of these trips may be scheduled in advance but many are scheduled on demand. Changes do occur where trips are canceled or where they are running long or short. Access Operators may be required to alter their schedule to help with other runs or to shorten them. Thus, ridership and service demands fluctuate repeatedly during a single day or week and staffing needs for specific times or days are not certain from day-to-day, nor are they predictable months in advance.

⁴ Extra Board Operator Routes are the most unpredictable. Extra Board Operators are available seven days a week to cover any type of work from a fixed route to access. They do not have any certainty of when they will be needed on any given day or week. Thus, the Company argues they cannot estimate the times, hours, or days they will work in advance, but yet, the operators are encouraged to bid for the Extra Board where they are guaranteed 32 hours of pay each week.

Access runs was compliant with the contractual provisions by failing to denote the specific start up and stop times. Company refers only to "A.M. or P.M. shifts" on the bid, specifically, assignments 32 through 43 in JX-4. An additional issue raised was whether the Company failed to pay full-time Access drivers more than thirty-two (32) hours per week.

This matter was submitted to this arbitrator for decision.

Relevant Provisions of the CBA

Article 2 - Management Rights and Prerogatives

- A. The inherent nature of the transit industry requires, in the interest of public safety, that sound methods of operation and certain standards of discipline among its Operators be maintained. The Union recognizes the rights and prerogatives of the Company to manage, operate, and conduct its business, subject to the terms and conditions of this Agreement.
- B. The right to hire, promote, discharge or discipline for just cause and to maintain discipline and efficiency of Operators is the sole responsibility of the Company. The Company may establish, implement and enforce reasonable rules and regulations at any time so long as such rules and regulations are not in conflict with any specific provisions of this Agreement. Before implementation of any new or revised work rule or regulation the Company shall give notice to the Union at least fifteen (15) business days prior to the effective date of such rule or regulation, the Company will post a copy and will provide a copy of the rule to the Union. The Company will meet with the Union to discuss the rule, if requested. The Company will provide each employee with a copy of the Company Rules and Regulations and will maintain a complete set of its Rules and Regulations for review by Operators.

Article 14 - Bidding of Runs

- A. There shall be at least three (3) General Bids each year. Bids will be by Division.
- B. The Company shall post the date and the time of the General Bid and the bid sheet at least fourteen (14) calendar days prior to the date of the General Bid with a copy sent to the local Union. The Company will provide a bid sheet containing all pertinent information (including assignment times, days off, and weekly hour totals), and a current seniority list indicating the driver's name, seniority number, and time designated to bid.

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Article 20 - Work Week Guarantee

- A. The Company will make a diligent effort to schedule as many assignments/runs as near to forty (40) hours per week as possible, based on service demands. The Company, with the Union's assistance, will prepare the runs cuts.
- B. Extra-Board Operators will be guaranteed thirty-two (32) hours per week. The guarantee shall apply providing the Operators make all regular run assignments. Approved time off for jury duty, bereavement, Company-required court attendance, vacation, holidays, and union leave, shall be considered the same as making the regular bid assignment.

Article 21 - Part-Time Operators

- A. Part-time Operator will be limited to a maximum of thirty-two (32) hours per week.

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Article 22 - Employee Classifications

- A. Full-Time employees are those who are regularly scheduled to work more than thirty-two (32) hours weekly. Full-time employees are the only classification to receive benefits under this Agreement.

Union Position

Union argues Company violated Article 14 of the CBA when it failed to denote specific start and stop times on the Access bid sheet (JX-4) but rather referred to it as only "A.M. or P.M. shifts."

Union argues that with the execution of the initial CBA on March 31, 2009, Company specifically listed for all the full-time bids, start times and stop times (assignment times) including those for Access drivers. However, a dispute arose over Access drivers assignment times. Company and Union commenced correspondence over this issue and the Company switched and ceased to specifically list sign in and sign out times for Access drivers and to designate only a.m. or p.m. shift. Specifically, on August 9, 2010, Michael Chinn, Access Manager for DCTA e-mailed (UX-3) Chris Garrett, ATU, Local 1338 Vice President and informed her they would be posting the Access bid without specific hours.

Union argues the Company agreed contractually to include this information in the bids and also agreed contractually that full-time employees would get more than thirty-two (32) hours per week. Company's failure to abide by its contractual requirements is simply a means of trying to save money on the backs of its employees.

Union requests the grievance be sustained. The bids were not posted in compliance with the requirements of Article 14 of the CBA and the Company failed to provide more than thirty-two (32) hours of paid work for the Access drivers who are designated as full-time drivers every week.

Company Position

Company argues the Union's position in this matter is incorrect and inconsistent with the CBA as a whole and the nature of the business. Article 14(B) provides in pertinent part "The Company will provide a bid sheet containing all pertinent information (including assignment times, days off, and weekly hour totals)."

Company argues the most glaring indicator that the specificity sought by the Union is not required by the CBA is demonstrated by a comparison with the Extra Board bids. The Extra Board bids, numbered 46 to 56 in JX-4, contain the following information regarding the assignment times and days off: the word "available" listed under each day of the week. This is much more general than the listing of AM/PM shift and specific days off for the Access bids, yet the Union acknowledged that it had not challenged the propriety of the Extra Board bids. The reason for the different information in the Extra Board bids is due to the nature of the job. There is no certainty of when the Extra Board operators will be needed and thus, no ability to predict months ahead in a bid what specific times or even

days they will work or even when they will be off. The same applies to the Access operator bids as well. If specificity of the information in the Extra Board bids can vary due to the nature of the work, then so can the Access bids.

Company argues, "the primary rule in construing a written contract is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties, and to interpret the meaning of a questioned word, or part, with regard to the connection in which it is used, the subject matter and its relation to all parts and provisions. Riley Stoker Corp., 7 LA 764,767 (Platt, 1947). In applying this principle, it is clear the Union's interpretation of Article 14 is incorrect.

Company further argues that Article 20 of the CBA discusses hours of work for operators. Article 20(A) notes that hours may be uncertain and states, "The Company will make a diligent effort to schedule as many assignments/runs as near to forty (40) hours per week as possible, based on service demands." The phrase "based on service demands" denotes that the hours of the schedules are not guaranteed and may be subject to constant change due to the nature of the business and daily variations in requests for rides, particularly among Access customers. Thus, reading this language in conjunction with Article 14 it is clear that "pertinent" information does not mean the bids must have specific start and stop times or exact hours as it is impossible to determine based on the inherent variability of service demands in the Access work.

Company requests the grievance be denied.

Discussion and Opinion

Union has the burden of proof. In order for the Union to demonstrate its burden of proof, the Union must establish the intent of the contract language.

**RE: Transit Management of Denton County and ATU, Local 1338
FMCS Case No.: 100927-60220-3**

If the contract language is clear and unambiguous, the intent of the contract language has been established. If the contract language is not clear and unambiguous, the Union may establish its intent by relying on the parties bargaining history, its past practices, arbitral authority, or by its customs and practices within the industry. The Company, on the other hand, in rebutting the Union's burden of proof, may rely on the same criteria.

In dispute is whether the Company violated Article 14 of the CBA when it failed to denote specific start and stop times on the Access bid sheet (JX-4) but rather referred to it as only "A.M. or P.M. shifts."

Article 14 (B) states,

"The Company shall post the date and the time of the General Bid and the bid sheet at least fourteen (14) calendar days prior to the date of the General Bid with a copy sent to the local Union. The Company will provide a bid sheet containing all pertinent information (including assignment times, days off, and weekly hour totals), and a current seniority list indicating the driver's name, seniority number, and time designated to bid."

The arbitrator is not persuaded by the Company's comparison of the Extra Board with the Access Operator runs. Company argued there is no certainty of when the Extra Board operators will be needed and thus, no ability to predict months ahead in a bid what specific times or even days they will work or even when they will be off. The same analogy should apply to the Access operator bids. Company argued that if specificity of the information in the Extra Board bids can vary due to the nature of the work, then so can the Access bids.

The arbitrator finds the parties negotiated Article 14 (B) into the CBA and it is clear and unambiguous. It requires the Company to provide a bid sheet to the operators containing all pertinent information (including assignment times, days off, and weekly hours totals). Company has ceased providing the proper information the Union bargained for in negotiations as of the August 2010 bid.

RE: Transit Management of Denton County and ATU, Local 1338
FMCS Case No.: 100927-60220-3

Company provided the correct information prior to the August 2010 bid. Union makes the argument that the Company by assignment of the runs to an "A.M. or P.M. shift" is simply a means of trying to save money on the backs of its employees. This arbitrator agrees. If however, the Company wishes to change this provision in the CBA, it must negotiate in good faith with the Union during the window period of the CBA and come to a "meeting of the minds."

With respect to the second issue that the Company failed to provide more than thirty-two (32) hours of paid work for the Access drivers who are designated as full-time drivers every week, the arbitrator finds that Article 20 (A) states,

"The Company will make a diligent effort to schedule as many assignments/runs as near to forty (40) hours per week as possible, based on service demands. The Company, with the Union's assistance, will prepare the runs cuts."

It appears to the arbitrator that the Union was privy and assisted the Company in the preparation of some of the full-time operator runs cuts. However, Access operators who are full-time employees were labeled on the A.M. or P.M. shift. Thus, the Union could not have assisted the Company with the assignment of runs cuts with the Access drivers. Accordingly, the undersigned issues the following,

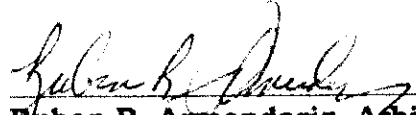
**RE: Transit Management of Denton County and ATU, Local 1338
FMCS Case No.: 100927-60220-3**

Award

The grievance is sustained. Company will cease to post the Access bid with A.M. or P.M. shift and will provide pertinent information in accord with Article 14(B) to include the assignment times, days off, and weekly hour totals. Moreover, Company will in accord with Article 20(A) schedule as many assignments/runs as near to forty (40) hours per week as possible, based on service demands. Company must use the Union's assistance with preparing runs cuts. Additionally, employee's adversely affected by Company's actions are to be made whole.

Arbitrator retains jurisdiction regarding any issues pertaining to the remedy ordered herein.

Issued at San Antonio, Texas, the 20th day of July 2011.



Ruben R. Armendariz, Arbitrator